

## **REMARKS**

### **I. Introduction**

Claims 1-3, 6-9 and 11-14 remain pending in the present application. Claim 1 has been amended to address formal issues raised by the Examiner for the first time in the Office Action. For at least the reasons set forth below, Applicants respectfully submit that the claims are in condition for allowance.

### **II. Rejection of Claims 1-3, 6-9 and 11-14 under 35 U.S.C. § 112, first paragraph**

Claims 1-3, 6-9 and 11-14 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner contends that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants respectfully submit that all claimed features are fully supported by the specification.

With respect to claim 1, the Examiner states that the following claimed feature is “new matter”: “which operating modes can be activated in different speed ranges, each operating mode having a corresponding number of speed-regulating functions, wherein a change in a current operating mode which results in the loss of a speed-regulating function occurs solely via a command of the driver to the input device.” With respect to the feature that “which operating modes can be activated in different speed ranges, each operating mode having a corresponding number of speed-regulating functions,” Applicants note that the entire application is about different speed ranges for different operating modes, e.g., “stop & roll” mode, and “ACC” mode, and the corresponding speed regulating functions for the different modes are clearly discussed in the specification, e.g., at p. 1, l. 10 – p. 2, l. 33; p. 4, l. 18-28; and p. 8, l. 5-8. In any case, the recitation that different operating modes can be activated in different speed ranges is clearly recited in original claim 4, so this recitation cannot be “new matter.” With respect to the recitation that “a change in a current operating mode which results in the loss of a speed-regulating function occurs solely via a command of the driver to the input device,” Applicants note that this feature is clearly described in the specification: “a change from Stop & Roll to ACC mode may be permitted only when the driver actively raises the desired speed,” (p. 5, l. 33-35), and the specification clearly indicates that the Stop & Roll mode provides an additional control of braking to a standstill (which is not available in ACC). (See, e.g., p. 2, l. 7-9, and p. 4, l. 24-26).

For at least the foregoing reasons, Applicants submit that claim 1 and its dependent claims 2-3, 6-9 and 11-14 are in compliance with 35 U.S.C. § 112, first paragraph.

**III. Rejection of Claims 1-3, 6-9 and 11-14 under 35 U.S.C. § 112, second paragraph**

Claims 1-3, 6-9 and 11-14 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

In claim 1, the Examiner noted that the phrases "which operating modes can be activated" and "the second operating mode being activatable" allegedly "do not indicate if the limitations are part of the invention or not." Initially, Applicants note that claim 1 does not actually recite "the second operating mode being activatable." In any case, Applicants have amended claim 1 to recite "which operating modes are configured to be activated," and "an operating mode for a higher vehicle speed range that is configured to be activated." No new matter or issue is raised by this amendment, since the amendment merely changes the phrasing and does not change the claim scope.

The Examiner notes that "a speed range" is objectionable because it was not defined or provided. Applicants have amended claim 1 to recite "first predetermined vehicle speed range" and "second predetermined vehicle speed range," and the amended language eliminates any ambiguity.

The Examiner objects to "a loss of a speed regulating function" as being unclear. Applicants respectfully submit that the intended meaning is clear from the plain language of the feature, i.e., the "loss of speed regulating function" simply means a speed regulating function that exists in the old operating mode (before the change) does not exist in the new operating. Accordingly, Applicants submit that this feature does not present any ambiguity.

With respect to the Examiner's objection to "a higher vehicle speed range" and "a lower vehicle speed range," Applicants have amended these features to recite "a first predetermined vehicle speed range" and "a second predetermined vehicle speed range."

In response to the Examiner's objection to the feature "wherein an upper limit of the lower speed ranged . . . provides in certain instances an automatic braking," Applicants have amended claim 1 to recite that "a second of the plurality of operating modes is for a second predetermined vehicle speed range that is lower than the first predetermined vehicle speed range, and wherein an upper limit of the second speed range is at least equal to the limiting speed, and wherein the second operating mode provides in certain instances an automatic braking of the vehicle to a standstill."

With respect to the Examiner's alleged confusion regarding the recitation of "an upper limit of the . . . speed range is at least equal to the limiting speed," Applicants note that "at least" is the proper phrase for the meaning intended by the Applicants. Although the Examiner states that "the second speed is lower than the claimed 'limiting speed,'" this is not what is recited in the claim. Claim 1 recites that the first speed range is above the limiting speed; the second speed range is lower than the first speed range; and the upper limit of the second speed range is at least equal to the limiting speed. This relationship is shown graphically in Fig. 2, i.e., ACC speed range starts at the limiting speed  $V_s$ , and Stop & Roll speed range extends from complete stop to an upper limit which is  $V_s+h_1$ .

For the foregoing reasons, Applicants submit that claim 1 and its pending dependent claims 2-3, 6-9 and 11-14 are in compliance with 35 U.S.C. § 112, second paragraph.

#### **IV. Rejection of Claims 1-3, 6-9 and 11-14 under 35 U.S.C. § 102(e)**

Claims 1-3, 6-9 and 11-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,658,344 ("Hirasago"). Applicants respectfully submit that Hirasago fails to anticipate pending claims 1-3, 6-9 and 11-14, for the reasons explained below.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim element. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claim invention, arranged exactly as in the claim. Lindeman, 703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to

practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Amended claim 1 recites, in relevant parts, “the input device having a plurality of operating modes differing in functional scope, which operating modes are configured to be activated in different speed ranges, each operating mode having a corresponding number of speed-regulating functions, wherein **a change in a current operating mode which results in the loss of a speed-regulating function occurs solely via a command of the driver to the input device**; and a decision unit to determine . . . whether **a change in the desired speed input by the driver is to be interpreted as a command for changing the current operating mode**; . . . wherein the decision unit deactivates the speed controller when, in the second operating mode [for lower speed range], **the speed of the vehicle increases, and the driver does not input a new desired speed, while the actual speed of the vehicle lies within a predefined speed range.**”

In support of the rejection, the Examiner largely relies on the argument that the functional limitations can be ignored for the purposes of the anticipation rejection because these functional limitations are “statements of intended use [which] do not serve to patentably distinguish the claimed structure.” (Office Action, p. 9, l. 4-5). However, Applicants note that it is clearly incorrect for the Examiner to contend that functional limitations may be completely ignored: “A functional limitation must be evaluated and considered, just like any other limitation of the claim.” (MPEP 2173.05(g)). Applicants note that the Examiner’s reliance on the cited cases, e.g., In re Casey and In re Otto, in connection with the present anticipation rejection is misplaced, since these cases dealt with the significance of the inclusion of **material or article merely worked upon by a device being claimed**, which is completely different from present claim 1 which includes the functional limitations to describe the internal operations performed by the structural units themselves, i.e., the input unit and the decision unit. Accordingly, Applicants submit that the functional limitations must be considered and given patentable weight.

While Hirasago does disclose multiple operating modes, in contrast to the above-recited claimed features Hirasago clearly fails to teach or suggest that these multiple operating modes are distinguished with regard to the scope/number of speed-regulating functions. In addition, Hirasago clearly does not suggest that different transitions between operating modes are distinguished as a function of the scope/number of speed-regulating functions, i.e., Hirasago does not teach or suggest that **“a change in a current operating mode which results in the loss of a speed-regulating function occurs solely via a command of the driver to the input device.”** Furthermore, nothing in Hirasago teaches or suggests that, in the event of a change of the desired speed input by the driver, the decision unit decides whether this change is to be interpreted as a change of the operating mode. Still further, Hirasago clearly does not teach or suggest that **“the decision unit deactivates the speed controller when, in the second operating mode [for lower speed range], the speed of the vehicle increases, and the driver does not input a new desired speed, while the actual speed of the vehicle lies within a predefined speed range.”**

For the foregoing reasons, claim 1 and its dependent claims 2-3, 6-9 and 11-14 are not anticipated by Hirasago. Withdrawal of the anticipation rejection of pending claims 1-3, 6-9 and 11-14 is respectfully requested.

### CONCLUSION

In view of the foregoing, it is submitted that claims 1-3, 6-9 and 11-14 are in allowable condition. It is therefore respectfully requested that the present application issue as early as possible.

Respectfully submitted,

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